

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENNIS GERALD CLAIBORNE,	)	No. C 06-2012 CW (PR)
	)	
Plaintiff,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
OFFICER T. J. STEVENS, et al.,	)	(Docket no. 7)
	)	
Defendants.	)	
_____	)	

INTRODUCTION

Plaintiff Dennis Gerald Claiborne is a state prisoner who is currently incarcerated at High Desert State Prison. He filed this action in the Monterey County Superior Court, Clairborne v. Stevens, M75009. Plaintiff's original complaint alleged that Defendant Officer T. J. Stevens was aware of Plaintiff's mobility impairment and that Defendant Stevens's failure to remove his waist restraints caused him to lose his balance during a medical examination. Plaintiff fell and injured his head, neck and right knee. Plaintiff claims that he still endures pain resulting from his fall.

On March 16, 2006, Defendant Stevens, who is represented by the State Attorney General's Office, removed the action to this Court pursuant to 28 U.S.C. § 1441(b).

The Court reviewed the complaint pursuant to 28 U.S.C. § 1915A and dismissed it with leave to amend upon finding that Plaintiff's allegations did not support a theory of liability for deliberate indifference to his serious medical needs against Defendant Stevens. The Court allowed Plaintiff to file an amended complaint to cure the pleading deficiency. Plaintiff then filed his amended

1 complaint on January 8, 2007.

2 Defendant Stevens has filed a motion asking the Court to  
3 screen the amended complaint under 28 U.S.C. § 1915A. Defendant  
4 Stevens's motion to screen the amended complaint (docket no. 7) is  
5 GRANTED.

6 The Court has reviewed the amended complaint and finds that it  
7 does not cure the pleading deficiency identified in the Court's  
8 Order dismissing the complaint with leave to amend. The amended  
9 complaint simply reiterates the same allegations that were stated  
10 in his original complaint. While Plaintiff names two new  
11 Defendants, Sgt. T. J. Morrison and Dr. Isaac Grillo, he alleges  
12 similar deliberate indifference claims against them based on their  
13 refusal to remove his waist restraints. The Court has already  
14 determined that Plaintiff's allegations in his original complaint  
15 failed to show how Defendant Stevens should have known that the  
16 refusal to remove the waist restraints would cause harm to  
17 Plaintiff. The Court further stated:

18 Defendant's refusal to remove the waist restraints could  
19 amount to negligence in that Plaintiff alleges that the  
20 presence of the waist restraints caused him to lose his  
21 balance and fall during his medical examination. However,  
22 a claim of negligence is insufficient to make out a  
23 violation of the Eighth Amendment. See Toguchi v. Chung,  
24 391 F.3d 1051, 1060-61 (9th Cir. 2004); Hallett v. Morgan,  
296 F.3d 732, 744 (9th Cir. 2002); Franklin v. Oregon,  
662 F.2d 1337, 1344 (9th Cir. 1981); see, e.g., McGuckin,  
974 F.2d at 1059 (mere negligence in diagnosing or  
treating a medical condition, without more, does not  
violate a prisoner's Eighth Amendment rights).

25 (Dec. 28, 2006 Order at 4-5.) Therefore, the Court finds that  
26 Plaintiff's allegations in his amended complaint against all named  
27 Defendants do not state a claim for which relief may be granted.

28 Accordingly, Plaintiff's claims against Defendants Stevens,

1 Morrison and Grillo are DISMISSED with prejudice and without leave  
2 to amend.

3 CONCLUSION

4 For the foregoing reasons and good cause shown, the Court  
5 orders as follows:

6 1. Defendant's request to screen the amended complaint  
7 (docket no. 7) is GRANTED.

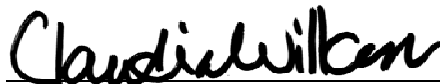
8 2. Plaintiff's claims against Defendants Stevens, Morrison  
9 and Grillo are DISMISSED with prejudice and without leave to amend.

10 3. The Clerk of the Court shall terminate all pending  
11 motions and close the file.

12 4. This Order terminates Docket no. 7.

13 IT IS SO ORDERED.

14 DATED: 9/25/07



15 CLAUDIA WILKEN  
16 United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DENNIS G. CLAIBORNE,

Plaintiff,

v.

CORRECTIONAL OFFICER STEVENS et al,

Defendant.

Case Number: CV06-02012 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 25, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dennis Gerald Claiborne  
E-91198/ Fac. A, Bldg. 1-144L  
High Desert State Prison  
PO Box 3030  
Susanville, CA 96127

Timothy J. McDonough  
Deputy Attorney General  
Dept. of Justice, Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

Dated: September 25, 2007

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California